(4) (CF 1009) (4)

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT

BILASPUR [C.G.]

WRIT PETITION NO. 2669/2004

PETITIONER :- Manjeet Singh Jabbal S/o Harbhajan Singh Jabbal, Terminated Conductor, M.P.State Road Transport Corporation Raipur Depot No.2 Near Moulipara Mandir, Ravigram, Raipur [C.G.]

VERSUS

RESPONDENTS :-1. M.P. State Road Transport Corporation through Managing Director, Head Quarter, Habibganj, Bhopal [M.P.]

2. Depot Manager [Inquiry] Third M.P. State Road Transport Corporation, Head Quarters, Habibganj, Bhopal [M.P.]

3. Managing Director, Chhattisgarh State Infrastructure Development Corporation, Raipur [C.G.]

P. R. No. 2678/04
Presented by Shri Ajay Khaparey
dated 17-8-04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

(60) APR

**HIGH COURT OF JUDICATURE AT BILASPUR (C.G)**

**Writ Petition No.2669 of 2004**

Manjeet Singh

Vs.

M.P.State Road Transport Corporation and others

**ORDER**

Post for 27.01.2005

Sd/-
Sunil Kumar Sinha
Judge

(61)

**HIGH COURT OF JUDICATURE AT BILASPUR (C.G)**

**Writ Petition No.2669 of 2004**

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Shri Sachin Singh Rajput, counsel for the petitioner

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ORDER

(27.01.2005)

**Sunil Kumar Sinha, J,**

The present petition is filed under Article 226/227 of the Constitution of India challenging the legality, validity and propriety of the order dated 17.3.2004 *(Annexure P-13)* passed in Civil Appeal No.408/MPIR/A-II/2002 by the Industrial Court, Raipur (C.G). By the impugned order, the learned industrial Court has dismissed the appeal filed by the petitioner against the order dated 17.12.2002 *(Annexure P-12)* passed in Case No.31/MPIR/92 by the Labour Court, Raipur.

(2) The facts of the case are that the petitioner filed an application under section 31(3) read with section 61 of Madhya Pradesh Industrial Relations Act 1960 before the Labour Court, Raipur, alleging that he was working as conductor in the

establishment of the respondents since the year 1980 and was dismissed from service by the order of respondent no.2 bearing No.203, dated 31.8.1991 (Annexure P-8). The further allegations are that a departmental enquiry was conducted against him and respondent no.2, dismissed him after recording a finding of misconduct. He further alleges that the aforesaid departmental enquiry was not conducted in accordance with law as the fundamental principles of natural justices were not complied with and in fact, he was not afforded any opportunity of being heard in the said enquiry. He prayed for setting aside of the aforesaid order and also for reinstatement alongwith the back-wages.

(3) The documents in relation to departmental enquiry have also been filed by the petitioner. It transpires from the aforesaid documents that on 12.3.1991, the petitioner was on duty as a Conductor in M.P.S.R.T.C. Bus No.7588 which was plying from Raipur to Fingeshwar. The Bus was stopped by the checking party and after checking it was found that out of 15 passengers sitting in the Bus, 10 were travelling without ticket. On investigation it was further found that the petitioner had realized the amount of fares from the said passengers, but the tickets were not issued to them. The cognizance in the matter was taken and a charge sheet was issued to the petitioner by the enquiry officer vide No.633 on02.4.1991. The copy of the charge sheet has been filed as Annexure P-1. The charge sheet

discloses the particulars of charges and it also discloses that the act of the petitioner was serious misconduct under clause 12(1)(b)(d)(f) of the standing order applicable in this case. A reply to the aforesaid charge sheet was submitted by the petitioner, the copy of which has been filed as Annexure P-2. The documents filed alongwith the writ petition show that the evidence etc., were also recorded by the enquiry officer and after completion of the enquiry, the charges were found to be proved against the petitioner. Thereafter, on 31.5.1991, an order of dismissal was passed against the petitioner holding him guilty of gross misconduct under clause 12(3)(b)(6) of the said standing order. It is after this, the petitioner challenged the legality and validity of the said order before the labour court on the grounds referred to above by filing an application under section 31(3) read with section 61 of the M.P.I.R. Act. After issuance of the notice by the labour Court, the respondents also filed their written statement. The labour Court framed 3 issues in this case, which are as follows:

"1. क्या आवेदक के विरूद्ध की गई विभागीय जांच प्राकृतिक न्याय सिद्धांत के अनुरूप न होकर अवैधानिक है ?

2. क्या आवेदक वादोत्तर में वर्णित दुराचरण का दोषी होकर उसे दिया गया दंड उचित एवं वैध है ?

3. सहायता एवं व्यय ?"

Issue no.1 was treated as a preliminary issue and after giving due opportunities of hearing to both the parties, the same was decided by an order dated 21.8.2000 which is filed as Annexure P-11. By the said order the enquiry was held to be illegal. Thereafter, the enquiry was conducted by the Labour Court. After considering the entire evidence and documents on record, the labour Court decided the other two issues against the petitioner and it was held that the petitioner was guilty of misconduct and finally the application filed by the petitioner was dismissed.

(4) It is important to mention this fact that while passing the order, the labour Court also observed about the antecedents of the petitioner. It has been mentioned in the order that earlier also, vide case No.17/1986 MPIR, the petitioner was penalized with the penality of Rs.300/- as he was carrying 3 passengers without tickets. Other incidents of similar nature were also mentioned in the order of the labour court and thereafter only, the labour Court passed the aforesaid order.

Against the said order passed by the labour Court, the petitioner filed an appeal before the industrial Court u/s 65 of the aforesaid Act and the industrial Court after examining the facts and documents on record dismissed the appeal and confirmed the order passed by the labour Court.

(5) The contentions of the learned counsel for the petitioner are that the order passed by the courts below are unjustified and the courts below erred in law in holding the petitioner guilty of serious misconduct . A *de-novo* enquiry by the Labour Court was not permissible after the domestic enquiry was found to be illegal and the punishment awarded to the petitioner is also disproportionate.

(6) I have heard learned counsel at length and have also perused the records filed alongwith the writ petition.

(7) It is to be kept in mind that while dealing with a matter under Article 227 of the Constitution of India, though the High Court is duty bound to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner, but the High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of jurisdiction of the subordinate courts or tribunals. Exercise of the power and interference with the orders of the Courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that in fact, the High Court while acting under this article cannot exercise its power as an appellate Court or substitute its own

judgment in place of that of the subordinate Court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion which the court or tribunal has come to. ***(See (2001) 8 SCC Pg.97 (Estralla Rubber -V- Dass Estate (P) Ltd.,)***.

It has also been held in the matter of ***Sugarbai M. Siddiq and others -Vs- Ramesh S. Hankare (dead) by L.Rs.,*** reported in ***(2001) 8 SCC 477*** as a settled principle of law that in a petition under Article 227 of the Constitution, the High Court has to see whether the lower court or the tribunal has jurisdiction to deal with the matter and if so, whether the impugned order is vitiated by procedural irregularity; in other words, the Court is concerned not with the decision but with the decision making process.

(8) Keeping these principles in mind if we examine the case of the petitioner, then it appears that first of all, the petitioner was served with a charge sheet by the department under the specified provisions of relevant standing order and thereafter, a reply was taken from him and after due enquiry and giving an opportunity of hearing, the order of dismissal was passed. This is the matter in the first instance. However, when the matter came up before the labour Court, the said court after framing

issues, took the issue no.1 as the preliminary issue and after hearing the parties held the enquiry to be illegal and the Court itself enquired into the matter and thereafter only the charges were held to be proved. These facts go to show that the labour court independently dealt with the matter and upon the pleadings and evidence of the parties came to conclusion that the petitioner was guilty of serious misconduct. The finding is a finding of fact and learned counsel for the petitioner failed to point out any perversity in the aforesaid finding recorded by the labour court.

(9) About the jurisdiction of the labour court, to conduct the enquiry itself, there can hardly be any doubt after the decision of the Division Bench of Madhya Pradesh High Court reported in 1969, MPLJ Pg.132 ***(Jagat Singh Chaudhary –Vs- M.P.Electricity Board, Jabalpur and others)*** which lays down that if the domestic enquiry resulting into termination of service was found to be defective, then, the labour Court itself can hold an enquiry and uphold the order of termination of service.

(10) Now coming to the question of disproportionate punishment, a decision of the apex Court in the matter of ***Regional Manager, UPSRTC, Etawah and others, Appellants –Vs- Hotilal and another, respondents*** reported in ***AIR 2003 S.C. 1462*** is referable. The apex Court has held

that where a bus conductor was found to be carrying ticket-less passengers and was held to be guilty of gross misconduct/dereliction of duty on his part, the same cannot be dealt with leniently. The bus conductor is a person who deals with public money and acts in fiduciary capacity. The highest degree of integrity and trustworthiness is a must and unexceptionable. If the charges are proved after elaborate and fair enquiry, the order of dismissal is not a disproportionate order.

(11) In the light of the aforesaid decisions given by the apex Court and also in the light of the findings recorded by the labour Court as well as the industrial Court and the nature of charges held to be proved against the petitioner and especially looking to the antecedents of his service, I do not find any reason to interfere with the orders of the said Courts. I find no merit in the petition. The petition is dismissed at the motion stage itself. No order as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

27.01.2005

Rao